REMARKS

Related Application

The instant application is related to copending application Serial No. 10/553,668, filed October 17, 2005. Both applications claim the benefit of priority from US Provisional Application Serial No. 60/ 463,726, filed April 18, 2005.

Amendments

The claims are amended to use language and punctuation in accordance with conventional US practice. With respect to the amendments to claim 3, see, for example, page 24, lines 14-20. Also, use claims have been converted into method claims. New claim 33 is directed to a cream embodiment of the invention. See, e.g., page 62, lines 6-9.

Election

In response to the Restriction Requirement, applicants hereby elect Group I, claims 1-28, and 33, drawn to formulations. With respect to the Election of Species Requirement, applicants elect the following embodiments (corresponding to species groups (a)-(i) set forth at pages 4-5 of the Office Action):

(a) creams such as the oil-in-water creams of Examples 4-5 (see claim 3);

(b) proteins (see claim 5);

(c) effect pigments (see claim 7);

(d) synthetic mica (see claim 9);

(e) TiO_2 (see claims 10-13);

(f) spherical particles (see claims 14-15);

(g) silica (see claim 17);

(h) zinc oxide (see claim 18); and

(i) Vancomycin (see claim 21).

Claims 1-28 and 33 read on the elected species. The Restriction Requirement is, however, traversed.

In the Restriction, it is asserted that Groups I, II, and III, drawn to formulations, methods of preparing same, and methods of using same, respectively, do not relate to a single general inventive concept because the allegedly lack the same or corresponding technical

feature under PCT rule 13.2. Applicants disagree.

See section (d) of Annex B (Unity of Invention) of the Administrative Instruction under the PCT, which states that there are three particular situations, for determining unity of invention under Rule 13.2, that are explained in greater detail. One of these situations is the case of certain combinations of different categories of claims.

As described in section (e)(i), one of these combinations is where there is an independent claim to a product, an independent claim to a process specially adapted for manufacturing the product, and an independent claim for a use of the product. As for the meaning of "specially adapted," this is intended to mean that the claimed process inherently results in the claimed product, and it is irrelevant whether the product can be made by another process. See section (e) of Annex B.

Contrary to the assertion in the Restriction, unity of invention for this combination does not require a technical feature that defines a contribution over the art. No such requirement is set forth in sections (d) and (e) of Annex B which provide the further details as to unity of invention under Rule 13.2 with respect to this combination of different categories of claims.

Thus, the Restriction fails to establish that the claims do not relate to a single general inventive concept under PCT rule 13.2. Withdrawal of the Restriction is respectfully requested.

With respect to the Election of Species Requirement, applicants assume that requiring an election for each of the features in dependent claims 3, 5, 7, 9, 10-13, 14-15, 17, 18, and 21 is intended to facilitate the Examiner's examination of these dependent claims. Applicants note that there are clearly embodiments within the generic claim that do not include, for example, an antibiotic of claim 21.

If on the other hand, the Election of Species Requirement is intended to require applicant to elect a single species from the claimed genus, then the Election of Species is improper as it prohibits applicant from selecting many of the species within the claimed genus as the elected species.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

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